



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Holk Development, Inc.

**File:** B-236765.2

**Date:** January 18, 1990

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### DIGEST

1. Contracting agency had compelling reason to cancel solicitation for renovation work after bid opening, where the solicitation did not provide for any asbestos removal and asbestos was discovered, necessitating substantial additional requirements which contracting agency reasonably determined should be performed as part of the renovation contract.

2. Contract may not be awarded to low bidder under solicitation which did not provide for any asbestos removal with the intent of materially modifying the contract after award to provide for asbestos removal.

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### DECISION

Holk Development, Inc., protests the cancellation, after bid opening, of invitation for bids (IFB) No. MDA946-89-C-0049, issued by the Department of Defense, Washington Headquarters Services (WHS), on June 21, 1989, for alteration and repair of the central computer facility and adjacent hallways of the Seventh Communications Group, U.S. Air Force, located at the Pentagon.

We deny the protest.

WHS canceled the IFB, under which Holk submitted the low bid, because the IFB failed to address the presence of asbestos in the floor covering material and because certain erroneous pre-bid information about asbestos had been disseminated. The IFB included a requirement for the "demolition," that is, the removal, of 8690-square feet of floor covering in the hallways surrounding the computer facility. While the IFB did not mention whether asbestos might be present in the floor covering, WHS reports that at a pre-bid conference on July 12, a government representative erroneously stated that if asbestos were to be found, the contractor was to stop work and that the asbestos removal

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would be handled separately from the contract. It is unclear whether all attendees heard this statement. WHS also states that on July 20, 1989, four days prior to bid opening, one prospective bidder was also erroneously told by an Air Force representative that if the floor covering was found to contain asbestos, asbestos removal procedures (now estimated to cost \$68,000) would not be required if the floor covering was removed by a "chipping action." In addition, pre-bid, oral information concerning other substantive work matters was conveyed to only two other prospective bidders out of the fourteen bidders who ultimately submitted bids.

Holk contends that neither WHS' failure to address the asbestos problem in the IFB, which Holk asserts reflected a deliberate agency decision, nor the alleged pre-bid oral statements justify canceling the IFB after bid opening. On the other hand, WHS explains that it was not until after bid opening that the contracting officer directed testing of the floor covering for asbestos, which was found to be present. Consequently, on August 30, 1989,<sup>1/</sup> the contracting officer canceled the IFB on the basis that the specifications were "inadequate or ambiguous" and because there had been pre-bid oral communications conveyed to only some of the bidders. WHS argues that the discovery of asbestos in the floor covering material substantially changed the scope of the work required to be performed under the IFB so that cancellation was justified.

Federal Acquisition Regulation (FAR) § 14.404-1(a)(1) (FAC 84-49) provides that after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the IFB. However, FAR § 14.404-1(c)(1) (FAC 84-5) specifies that an IFB may be canceled after bid opening where "inadequate or ambiguous specifications" were cited, and our Office generally considers such cancellation appropriate where award under the solicitation would not serve the government's actual minimum needs. Instrument & Controls Serv. Co.--Request for Reconsideration, B-231934.2, Nov. 4, 1988, 88-2 CPD ¶ 441.

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<sup>1/</sup> On August 29, 1989, WHS had received a protest filed by another bidder, Centennial Contractors, objecting to the failure of the IFB to provide for asbestos removal. WHS states that it received this protest (later filed with our Office on August 30) when the contracting officer "was [already] in the process of briefing his supervisors, with the aim of cancelling the IFB." After the IFB was canceled, Centennial withdrew its protest.

Where an agency is contracting for construction work and after bid opening determines that its needs exceed those stated in the IFB, it is not unreasonable for the agency to cancel the IFB and resolicit all the work together to assure that all work at the particular site will be performed under one contract; the agency is not required to award a contract under the IFB and then award a separate contract for the additional work. Bill McCann, B-234199.2; B-234856, June 13, 1989, 89-1 CPD ¶ 554. Here, removal of the floor covering which was found to contain asbestos was a specific requirement under the IFB, but substantially increased removal and disposal procedures were necessary to perform the renovation because of the presence of the asbestos. Thus, award under the original IFB would not have resulted in obtaining the work needed to accomplish the renovation.

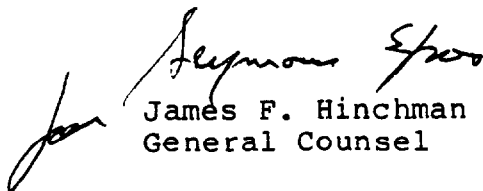
We have also held that information justifying the canceling of a solicitation can be considered no matter when the information first surfaced or should have been known. Independent Gas Producers Corp., B-229487, Mar. 2, 1988, 88-1 CPD ¶ 217. Consequently, even if WHS had initially decided, with knowledge of the asbestos problem (a knowledge which WHS states it did not have), not to include asbestos work under the IFB, WHS still was entitled to change its decision.

Holk argues that WHS could have awarded the contract and dealt with the asbestos removal by subsequent amendment. However, it would have been improper for WHS to award a contract to Holk with the intent of issuing an asbestos abatement amendment. An agency may not award a contract under stated specifications with the intent of making material changes to those specifications soon after award. Butler, Holland, and Scales, B-234985, July 28, 1989, 89-2 CPD ¶ 89. Any of the various post-award changes suggested by Holk would have had a significant cost impact and would have constituted a material change to the specifications.

Accordingly, we find that the agency reasonably determined that a compelling reason existed to cancel the IFB since it did not properly reflect the government's actual minimum needs. In view of this finding, we need not consider whether the erroneous pre-bid instructions also provided a basis for cancellation. Also, it is not relevant whether Centennial's allegedly untimely protest may have been considered by WHS. Finally, we note that Holk asserts that WHS previously canceled two other IFB under which Holk was low bidder. However, Holk did not provide any information regarding the facts surrounding those alleged cancellation

and, in any event, they are not relevant since each procurement is a separate transaction and must stand alone. Inter-Continental Equip., Inc., B-225689, May 14, 1987, 87-1 CPD ¶ 511.

The protest is denied.

James F. Hinchman  
General Counsel